determined that the alleged conduct attributed to Respondents, which was uncontested for purposes of the motion, constituted a violation of clearly established law. Under *Johnson* and *Behrens*, the defendant is permitted to claim on appeal that the facts as alleged by the plaintiff were insufficient to constitute deliberate indifference.[1] *Behrens*, *supra* at 312-13. Therefore, the order was immediately appealable because the Petitioner's version of events, regardless of the sufficiency of the supporting evidence, did not establish a claim for such a violation. As such, the Sixth Circuit Court of Appeals properly applied the rule from *Johnson* v. *Jones* when determining whether it had jurisdiction to review the district court's denial of the Motion for Summary Judgment based upon qualified immunity.

II. The facts as set forth by Petitioner do not establish a violation of the decedent's Fourteenth Amendment rights.

The doctrine of qualified immunity provides that "government officials performing discretionary functions generally are shielded from liability for civil damages insofar as their conduct does not violate clearly established statutory

1. The Petitioner asserted that the Defendants' actions were deliberately indifferent because the Defendants were aware of the comment made by Mr. Bradley regarding shooting himself, Officer Simpson gave Mr. Bradley blankets while flagged as potentially suicidal, and the Defendants failed to check on Mr. Bradley every 15 minutes pursuant to jail policies. For purposes of the appeal, it was the Defendants' position that, even if these allegations were true, the Defendants' conduct does not amount to deliberate indifference. Therefore, any factual dispute was immaterial to a determination of the appeal.

or constitutional rights of which a reasonable person would have known." *Harlow* v. *Fitzgerald*, 457 U.S. 800, 818; 102 S. Ct. 2727 (1982). In one of the most recent decisions regarding the defense of qualified immunity, this Court stated in *Saucier* v. *Katz*, 533 U.S. 194; 121 S. Ct. 2151 (2001) that, in order to assess whether an official is entitled to qualified immunity, the Court must engage in a two-part sequential analysis: First, the Court must determine whether the plaintiff has alleged facts which, when taken in the light most favorable to him, show that the defendant's conduct violated a constitutional right. *Saucier*, 533 U.S. at 201. "*This must be the initial inquiry.*" *Id.*

If the violation of a constitutional right cannot be established, "there is no necessity for further inquiries concerning qualified immunity." *Id.* However, if a violation can be proven, the next step is to determine whether the right was clearly established. *Id.* "This inquiry . . . must be undertaken in light of the specific context of the case, not as a broad general proposition . . . ." *Id.*

42 U.S.C. § 1983 is predicated upon the deprivation of constitutional rights. To establish a claim under 42 U.S.C. § 1983, a plaintiff must prove two elements: (1) that the defendant was acting under the color of state law and (2) that the plaintiff was deprived of rights secured by the constitution or federal laws. *Parratt* v. *Taylor*. 451 U.S. 527, 535; 101 S. Ct. 1908 (1981).[2]

---

2. In the present case, the existence of the first element was not in dispute. With regard to the second element, Petitioner claims that the Respondents exhibited deliberate indifference to Mr. Bradley's serious medical needs.

Claims based upon suicides committed in jail are evaluated under the "deliberate indifference to a serious medical need" standard. *Estelle* v. *Gamble*, 429 U.S. 97, 105-06; 97 S. Ct. 285 (1977). Where jail officials are so deliberately indifferent to the serious medical needs of prisoners, they impose cruel and unusual punishment in violation of the Eighth Amendment. *Farmer* v. *Brennan*, 511 U.S. 825, 837-38; 114 S. Ct. 1970 (1994). However, there is no general right to be protected from committing suicide. *Rich* v. *City of Mayfield Heights*, 955 F.2d 1092, 1096-97 (6th Cir. 1992). Therefore, the proper inquiry regarding the liability of a city's employees under section 1983 for a jail detainee's suicide is:

> whether the decedent showed a *strong likelihood* that he would attempt to take his own life in such a manner that failure to take adequate precautions amounted to *deliberate indifference* to the decedent's serious medical needs.

Barber v. *City of Salem*, 953 F.2d 232, 239-40 (6th Cir. 1992) (emphasis added).

This Court has enunciated a subjective standard for determining whether prison officers acted or failed to act with deliberate indifference to a prisoner's serious medical needs:

> A prison official cannot be found liable under the Eighth Amendment for denying an inmate humane conditions of confinement unless the official knows of or disregards an excessive risk to inmate's health or safety; the official must both be aware of facts from which the inference could

> be drawn that a substantial risk of serious harm exists, and he must also draw the inference.

Farmer v. *Brennan*, 511 U.S. 825, 837; 114 S. Ct. 1970 (1994).

Deliberate indifference is a very high standard — *a showing of simple negligence or even heightened negligence is not sufficient. Stemler* v. *City of Florence*, 126 F.3d 856, 865 (6th Cir. 1997); *Grayson* v. *Peed*, 195 F.3d 692, 695 (4th Cir. 1990). The conduct for which liability attaches must demonstrate *deliberateness* equivalent to an intent to punish. *Estelle*, 429 U.S. at 106.

In the present case, even accepting the Petitioner's version of the events, there was no evidence that Officer Simpson acted with deliberate indifference to the serious medical needs of Mr. Bradley. The facts surrounding Officer Simpson's involvement in this case reveal that Officer Simpson first had contact with Mr. Bradley when he was dispatched to a residence due to a report of a suspicious person. After learning Mr. Bradley had a warrant out for his arrest, Officer Simpson brought Mr. Bradley in to the station. While at the station, Mr. Bradley stated to Officer Simpson: "You should give me your gun so I could shoot myself." Officer Simpson immediately told the shift commander, Lieutenant Thomson, about what Mr. Bradley said. Mr. Bradley was then booked and flagged as a potential suicide risk. Officer Simpson finished the booking process and removed Mr. Bradley's belt, jacket and other personal belongings before giving him two blankets and placing him in his cell. Officer Simpson then went back out on patrol.

These facts do not show a conscious disregard for Mr. Bradley's safety. Officer Simpson clearly showed concern for Mr. Bradley by reporting the statement regarding the gun to Lieutenant Thomson, thereby ensuring that Mr. Bradley would be flagged as a potential suicide risk. Officer Simpson did not go back out on patrol until Mr. Bradley's file was flagged in his presence. On the night Mr. Bradley was arrested, it was extremely cold outside and Mr. Bradley was placed in a concrete cell, so Officer Simpson gave him two blankets to keep warm. There was no evidence to suggest that any actions by Officer Simpson constituted "deliberateness tantamount to intent to punish." Even if Officer Simpson should have known of the risk presented when giving Mr. Bradley the blankets, when an official fails to act when faced with an apparent risk of which he should have known but did not, the official has not inflicted punishment in violation of the Eighth Amendment. *Farmer*, 511 U.S. at 837-38.

Petitioner urges this Court to grant her petition because the Court of Appeals' decision did not rely on the Officers' alleged failure to follow Ferndale's policies and procedures. This Court has held that officials "do not lose their qualified immunity merely because their conduct violates some statutory or administrative provision." *Davis* v. *Scherer*, 468 U.S. 183, 194; 104 S. Ct. 3012 (1984). Furthermore, in *Smith* v. *Freland*, 954 F.2d 343 (6th Cir. 1992), the Sixth Circuit rejected Petitioner's argument, holding that an officer's violation of a city's policies does not establish a violation of a plaintiff's constitutional rights. *Smith*, *supra* at 347-48. The *Smith* Court concluded:

> Furthermore, the fact that [the defendant's] actions may have violated Springdale's policies regarding

> police use of force does not require a different result. Under § 1983, the issue is whether [the defendant] violated the Constitution, not whether he should be disciplined by the local police force. A city can certainly choose to hold its officers to a higher standard than that required by the Constitution without being subjected to increased liability under § 1983. To hold that cities with strict policies commit more constitutional violations than those with lax policies would be an unwarranted extension of the law, as well as a violation of common sense. [Plaintiff's] position, if adopted, would encourage all governments to adopt the least restrictive policies possible.

Id.

Likewise, Petitioner cannot establish a constitutional violation by alleging that Officer Simpson violated Ferndale's policies and procedures. Even if Officer Simpson actions were contrary to the City's policies, he would not lose his qualified immunity. *Davis*, 468 U.S. at 194.

Petitioner also asserts that the Sixth Circuit failed to give weight to her expert's opinion regarding Officer Simpson's alleged deliberate indifference, even though Petitioner admits that the expert's opinion is irrelevant and inadmissible. Pet. App. at 20. Petitioner ignores the rule that an expert cannot testify regarding conclusions of law. In *Berry* v. *City of Detroit*, 25 F.3d 1342, 1353 (6th Cir. 1994), the Sixth Circuit held that "deliberate indifference" is a legal term, and "[i]t is the responsibility of the court, not testifying witnesses, to define legal terms." *Berry*, 25 F.3d at 1353. Therefore, while the expert may have been able to give his

opinion as to whether the Officers complied with Ferndale's procedures, he cannot testify that the violations of these policies proved the Officers acted with deliberate indifference. *Id.* Regardless, as noted above, the violation of a city's policies and procedures is not a constitutional violation under 42 U.S.C. § 1983. The Court of Appeals properly gave minimal weight to the opinions of Petitioner's expert. Accordingly, there is no reason to review the decision of the Court of Appeals.

III. The determinations by the Court of Appeals regarding Michigan's governmental immunity statute is not an appropriate subject for review.

A challenge to state law determinations by the Court of Appeals will rarely constitute an appropriate subject for review by the Supreme Court of the United States. *Haring* v. *Prosise*, 462 U.S. 306, 314, 103 S. Ct. 2368 (1983). *See also Propper* v. *Clark*, 337 U.S. 472, 486-87, 69 S. Ct. 1333 (1949). This case is no exception. Accordingly, the Petition for Writ of Certiorari should be denied.

A. It is well established in Michigan that an employee of a governmental agency is immune from tort liability if his or her conduct does not amount to gross negligence that is *the* proximate cause of the injury.

Michigan's Governmental Immunity Act provides that an employee of a governmental agency is immune from tort liability if his or her conduct does not amount to gross negligence that is the proximate cause of the plaintiff's injury. M.C.L. § 691.1407(2)(c). In *Robinson* v *Detroit*, 462 Mich. 439; 613 N.W.2d. 307 (2000), the Michigan Supreme Court

interpreted "the proximate cause" as it applies to governmental employees. The Court determined:

> The legislature's use of the definite article the' clearly evinces an intent to focus on one cause. The phrase the proximate cause' is best understood as meaning *the one most immediate, efficient, and direct cause* preceding an injury.

Robinson, 462 Mich. at 458-59 (emphasis added).

In *Robinson*, the plaintiffs were passengers who were injured when the police pursuit of their vehicles resulted in automobile crashes. The Court determined that the officers were immune from liability because their pursuit of the vehicles was not "the proximate cause" of the plaintiffs' injuries. *Id.* at 462. It is not enough that the gross negligence be "a" proximate cause, it must be the "direct cause preceding the injury." *Id.* The Court concluded that "[t]he one most immediate, efficient, and direct cause of the plaintiffs' injuries was the reckless conduct of the drivers of the fleeing vehicles," not the actions of the officers. *Id.* As a result, the Court held that the defendants were entitled to governmental immunity. *Id.*

Applying the above principles to the present case, the Sixth Circuit properly determined that Officer Simpson's alleged gross negligence, if any, was *not* the one most immediate, efficient, and direct cause of the injury. Clearly, the one most immediate and direct cause – *the* proximate cause – of the decedent's death was Mr. Bradley's act of hanging himself. It is undisputed that Mr. Bradley committed suicide while he was alone in his cell by tying blankets around the light and hanging himself. Therefore, it is undisputed

that the "one most immediate, efficient, and direct cause preceding his injury" was Mr. Bradley's act of hanging himself.

The Court of Appeals properly relied on additional cases from the Michigan Court of Appeals where the holding in *Robinson* was applied to cases involving the death or suicide of detainees. In *Kruger* v. *White Lake Twp.*, 250 Mich. App. 622; 648 N.W.2d 660 (2002), the mother of a pretrial detainee, Katherine Kruger ("Kruger"), called the police department and requested that her daughter be taken into custody. *Kruger*, 648 N.W.2d at 661. Kruger's mother informed the police that her daughter was intoxicated and was a danger to herself. *Id.* After discovering Kruger had an outstanding warrant, the defendants arrested her and transported her to the police department. *Id.* However, because there were no open holding cells, Kruger was handcuffed to a ballet bar in the booking room. *Id.* The officers left Kruger in the room unattended, where she later escaped. As she fled from the police station, she ran into traffic and was struck and killed by a car. *Id.* at 662.

The plaintiff in *Kruger* subsequently filed suit, alleging gross negligence against the Township and its officers. *Id.* Citing the *Robinson* decision, the Michigan Court of Appeals held that, even assuming the defendants' conduct was grossly negligent, it was not the one most immediate and direct cause of Kruger's death. *Id.* at 663.

Furthermore, in *Scott* v. *Charter Township of Clinton*, No. 233266, 2002 Mich. App. LEXIS 2358, 2002 WL 31160298 (Mich. App. Sept. 27, 2002), the plaintiff filed suit after a detainee arrested for domestic abuse committed suicide by hanging himself with the drawstring of his pants.

The Michigan Court of Appeals held that the trial court properly dismissed the gross negligence claims against the defendants because the officers' actions were not "the" proximate cause of the decedent's injuries:

> The parties do not dispute that *Scott committed suicide while he was alone in a cell by tying the drawstring around a heating vent and hanging himself. Therefore, it is undisputed that the "one most immediate, efficient, and direct cause preceding [his] injury" was Scott's act of hanging himself* . . . The trial court correctly granted summary disposition to the defendant officers because, as a matter of law, plaintiff failed to set forth facts to show that the officers acts were "the" proximate cause of Scott's injuries under *Robinson, supra*. Accordingly, Plaintiff's claim is barred by governmental immunity . . . .

Scott, 2002 Mich. App. LEXIS 2358 at *9-10, 2002 WL 31160298 at *3 (footnote omitted) (emphasis added).

The Western District of Michigan also addressed a similar circumstance in *Soles* v. *Ingham County*, 316 F. Supp. 2d 536 (W.D. Mich. 2004), where the personal representative of an inmate filed suit alleging that the inmate's suicide was caused by the prison official's gross negligence. In *Soles*, the decedent, Frayer, was placed in an observation cell because he was known to be suicidal. *Soles*, 316 F. Supp. 2d at 539. Frayer was placed back in general population after a social worker concluded that he would not harm himself. *Id.* at 540. On the night of the suicide, a guard noticed that the Frayer was acting strange and stated that he had a "gut hunch" that he was going to attempt suicide that night. *Id.*

The guard did not request that Frayer be returned to an observation cell, and did not tell his replacement about his suspicions. *Id.* Later that night, Frayer committed suicide by hanging himself with a bed sheet. *Id.*

In granting the defendants' motion for summary judgment, the district court in *Soles* concluded that even if the defendants' conduct was grossly negligent, liability could only be imposed if their conduct was the proximate cause of Frayer's death. *Id.* at 546. Since it was undisputed that Frayer committed suicide when he was alone in his cell by hanging himself with a bed sheet, "[t]he one most immediate, efficient and direct cause of his death was clearly not any nonfeasance by the defendants, but [Frayer's] own volitional self-destructive act." *Id.*

Based upon the holding in *Robinson* and subsequent decisions applying the *Robinson* decision, the Petitioner's argument is incorrect as a matter of law. The *Robinson* Court determined that, although the police pursuit may have contributed to the accident, the one most direct and immediate cause of the injuries was the plaintiff's reckless driving. *Robinson,* 462 Mich. at 462. Likewise, in the case at bar, even if Officer Simpson's alleged actions or inaction contributed to Mr. Bradley's death, the one most direct and immediate cause of his injuries was Mr. Bradley's act of hanging himself. Thus, as a matter of law, the Court of Appeals properly determined that Officer Simpson was entitled to governmental immunity.

B. The Court should defer to the interpretation of the Sixth Circuit Court of Appeals on the state law issue.

On questions of state law, it is the custom and practice of the Supreme Court of the United States to defer to the interpretation of the Court of Appeals for the Circuit in which the State is located. *Bishop* v. *Wood*, 426 U.S. 341, 346-47, 96 S. Ct. 2074 (1976). There is no reason in this case that the Court should deviate from this practice.

Petitioner's reliance on several cases from other jurisdictions has no merit. The cases cited by Petitioner have no relevance to Michigan's Governmental Immunity Act or application of the statute, an issue that is unique to Michigan.[3] It is not appropriate to look to the law as it may be generally applied in other jurisdictions for guidance, where the state law question is not a particularly difficult one. *Haring*, 462 U.S. at 314. Liability of governmental employees for gross negligence and "the proximate cause" are clearly defined by Michigan law, making the issue a simple one for the Sixth Circuit.

In this case, the Sixth Circuit Court of Appeals, which possesses a greater familiarity with Michigan law, concluded that Officer Simpson was immune under the Michigan Governmental Immunity Act because his actions were not "the" proximate cause of Plaintiff's injury as defined by Michigan law. This conclusion is supported by the analysis and interpretation of the statute by the Michigan Supreme Court and the Michigan Court of Appeals, as well as federal courts applying Michigan law. Accordingly, there is no reason this Court should grant Petitioner's request for consideration of this issue.

3. The cases cited by Petitioner relate solely to contributory negligence, an issue that was not present in the case at bar.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

KAREN M. DALEY
Counsel of Record
T. JOSEPH SEWARD
CUMMINGS, MCCLOREY, DAVIS
& ACHO, P.L.C.
33900 Schoolcraft
Livonia, Michigan 48150
(734) 261-2400

Attorneys for Respondent
Paul Simpson